

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LYNN HEARD,

Defendant-Appellant.

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UNPUBLISHED

July 28, 2000

No. 217414

Kalamazoo Circuit Court

LC No. 98-000214-FH

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Defendant was convicted of aiding and abetting a Meijer's cashier in embezzling Meijer's merchandise, MCL 750.174; MSA 28.371, and of engaging in a conspiracy with the cashier to commit the embezzlement, MCL 750.157a; MSA 28.354(1); MCL 750.174; MSA 28.371. He was sentenced as a fourth habitual offender, MCL 769.12; MSA 27.1084, to nine months in the county jail. He appeals as of right. We affirm.

Defendant argues that his convictions of aiding and abetting embezzlement and conspiracy to commit embezzlement were not supported by sufficient evidence because the prosecutor failed to prove that the Meijer's cashier occupied a "position of trust" with respect to Meijer's and that the cashier had the requisite "possession and control" of the Meijer's merchandise. We disagree.

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999); *People v Hampton*, 407 Mich 354; 285 NW2d 284 (1979). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of a crime. *Carines, supra*.

Embezzlement is an entirely statutory offense. *People v Bergman*, 246 Mich 68, 71; 224 NW 375 (1929). At the time of defendant's convictions, the statute that proscribes embezzlement, MCL 750.174; MSA 28.371,<sup>1</sup> provided:

Any person who as the agent, servant, or employee of another, or as the trustee, bailee, or custodian of the property of another, or of any partnership, voluntary association, public or private corporation, or of this state, or of any county, city, village, township or school district within this state, shall fraudulently dispose of or convert to his own use, or take or secrete with intent to convert to his own use without the consent of his principal, any money or other personal property of his principal which shall have come to his possession or shall be under his charge or control by virtue of his being such agent, servant, employee, trustee, bailee, or custodian, as aforesaid, shall be guilty of the crime of embezzlement, and upon conviction thereof, if the money or personal property so embezzled shall be of the value of \$100.00 or under, shall be guilty of a misdemeanor; if the money or personal property so embezzled be of the value of more than \$100.00, such person shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years or by a fine not exceeding \$5,000.00.

Defendant argues that there was insufficient evidence that the cashier was in a "position of trust" with respect to Meijer's and its property. However, the statute does not use the word "trust" or the phrase "position of trust." Instead, the statute lists the types of fiduciary relationships, including that of "employee," that are within the ambit of the statute. The statute broadly applies to all "employees" who by virtue of their employment status acquire possession or control of a principal's money or property and fraudulently dispose of or convert the property to their own use. *Bergman*, *supra* at 71. The statute requires that the employee be entrusted with money or personal property of his employer by virtue of his employment, but the statute does not impose the additional requirement that an employee hold a position of authority or special trust apart from the trust inherent in the employment relationship itself, i.e., that an employee will act solely for the benefit of the employer in all matters within the scope of the employee's employment and will not engage in acts injurious to the employer's business or financial interests. See, e.g., *People v Littlejohn*, 157 Mich App 729; 403 NW2d 215 (1987); *People v Rafalko*, 26 Mich App 565; 182 NW2d 732 (1970), and see generally 27 Am Jur 2d, Employment Relationship, § 216, pp 719-720. The prosecution in the instant case presented sufficient evidence that the cashier was an employee of Meijer's who was in a relationship of trust with respect to properly processing the sale of Meijer's merchandise handled by her for checkout.

The embezzlement statute also requires that the employer's property, which is fraudulently disposed of or converted, be in the employee's "possession" or "under his charge or control" by virtue of his employment. MCL 750.174; MSA 28.371. The phrase "under his charge or control" is broader than the term "possession." See 26 Am Jur 2d, Embezzlement, § 22, p 374. Sufficient evidence was presented from which the jury could conclude that the merchandise was in the cashier's possession or

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<sup>1</sup> MCL 750.174; MSA 28.371 was amended by 1998 PA 312, effective January 1, 1999. The material provisions of the statute were not changed by the amendment.

under her charge or control when the merchandise was received by her for checkout and was processed through her cashier's lane.

We therefore conclude that defendant's convictions for aiding and abetting embezzlement and conspiracy to commit embezzlement were supported by sufficient evidence.

Affirmed.

/s/ Martin M. Doctoroff

/s/ David H. Sawyer

/s/ Mark J. Cavanagh